

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

STUDIO360, INC, PLAINTIFF, vs. WYNN RESORTS LIMITED, DEFENDANT.	CASE No.: COMPLAINT [JURY DEMANDED]
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Plaintiff Studio360, Inc. alleges:

INTRODUCTION

1. This action results from defendant's willful infringement of plaintiff's copyrights to a photograph. Defendant Wynn Resorts knowingly used plaintiff's photograph to sell rooms, casino gaming and entertainment services at its resorts without plaintiff's permission to do so.

1 A copy of the infringed work as generally found on plaintiff's web site is attached as Exhibit
2 A.

3
4 2. This action is comprised of claims arising under the Copyright Act of 1976, 17
5 U.S.C.A. §101, *et seq.*, the Copyright Protection and Management Systems statute, 17
6 U.S.C.A. §1201, *et seq.*, and state law causes of action for unjust enrichment, unfair
7 competition and breach of contract.
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9 JURISDICTION AND VENUE

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11 3. This court has original jurisdiction over civil claims arising under the Constitution
12 under 28 U.S.C. §1331; federal question jurisdiction over all claims arising under the
13 Copyright Act under 28 U.S.C 1338(a); jurisdiction over the unfair competition claims under
14 28 U.S.C. §1338(b); jurisdiction based upon the diversity of citizenship of the parties under 28
15 U.S.C. §1332 as the amount in controversy is greater than \$75,000 and plaintiff is a citizen of
16 Washington and defendant is a citizens of a state other than Washington (to wit, Nevada); and
17 supplemental jurisdiction over the pendent claims under 29 U.S.C. § 1367(a).
18

19 4. Venue is proper pursuant to 28 U.S.C. §1391 and §1400(a) as defendant is subject to
20 personal jurisdiction in the district, a substantial part of the events or omissions giving rise to
21 the claim occurred in this jurisdiction including but not limited to contracting for goods and
22 services within the state, and all of plaintiff's copyrightable property that is the subject of the
23 action is situated in this jurisdiction.
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1 pools and a Maserati dealership. Along with the adjacent Wynn Encore resort, Wynn considers
2 it “the preeminent destination casino resorts on the Strip in Las Vegas.”¹ The hub of this
3 activity and key to their business model is the occupancy rate, meaning, they need people to
4 stay in their rooms so they will then spend money in their casinos, restaurants and
5 entertainment venues.
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8 10. Plaintiff produces websites with information about Las Vegas, including one about
9 the Wynn Las Vegas.² The prominent image of the Wynn Las Vegas hotel that appears on
10 plaintiff’s Wynn Las Vegas website shown in Exhibit A is a photograph taken by plaintiff’s
11 owner, Dan Taylor, a professional photographer. Taylor Decl. ¶2.
12

13 11. Today and at all relevant times, the title, author, and copyright holder were conveyed
14 in connection with the photograph on plaintiff’s web site along with terms and conditions
15 prohibiting unauthorized use of the photograph.³
16

17 12. In November 2008, plaintiff discovered defendant had copied, reproduced and
18 publicly displayed this photograph at the Wynn Las Vegas reservations page
19 (<http://reservations.wynnlasvegas.com>) without plaintiff’s permission, violating plaintiff’s
20 copyrights to the photograph. Defendant’s infringing use is shown in Exhibit B.
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22
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24 ¹ Wynn Resorts 2008 Annual Report (SEC Form 10-K)

² <http://www.destination360.com/north-america/us/nevada/las-vegas/wynn.php>

³ <http://www.destination360.com/terms.php>
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1 13. On information and belief, defendant selected and knowingly used the photograph
2 based on its value in attracting web traffic. Prior to its infringing use, Wynn paid commissions
3 to a third-party intermediary based on reservations originating from plaintiff's web site. As the
4 party paying these commissions to the intermediary, Wynn knew the Destination360 site about
5 the Wynn Las Vegas resort generated significant internet traffic and interest when it took the
6 image. Taylor Decl. ¶9. Indeed, it told plaintiff that. Taylor Decl. ¶10. But then, presumably to
7 avoid paying such commissions and attempting to attract plaintiff's internet traffic directly to
8 its web site, Wynn simply took the image and placed it on its single most important online
9 location, the reservations page for the Wynn Las Vegas. On information and belief, this is the
10 most important page in defendant's reservation system, the single page on its web site all
11 online reservations inquiries must go through and where the majority of room reservations for
12 its Las Vegas resort hotels are made.
13

14
15 14. On information and belief, in the course of taking, altering and displaying the image
16 on its resort reservations web page, Wynn also knowingly and intentionally failed to identify
17 either the photograph's author or copyright holder and violated the terms and conditions found
18 on plaintiff's web site against such use.
19

20 15. On information and belief, in the course of altering the image for its purposes and
21 displaying it on its reservations page, Wynn also altered and removed plaintiff's copyright
22 management information.
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1 16. On or about November 25, 2008, plaintiff contacted defendant, demanded they cease
2 the unauthorized use of the photograph and pay compensation for its illicit use. Defendant
3 removed the photograph from its site and offered to settle the damages claims for an amount
4 unacceptable to plaintiff.
5

6 17. Although duly demanded, Wynn has refused to compensate plaintiff for the
7 unauthorized use of the photograph.
8

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10 18. Studio360 registered the work with the Copyright Office on December 2, 2008.⁴
11

12 CLAIM 1 – COPYRIGHT INFRINGEMENT
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14 19. Plaintiff adopts by reference all prior paragraphs.
15

16 20. Plaintiff is the exclusive lawful owner of the copyrights in the photograph. The work
17 was registered with the United States Office of Copyright pursuant to 17 U.S.C.A. §§411,
18 Exhibit B, after defendant's infringing use.
19

20 21. The photograph was an original work of Dan Taylor, wholly owned by plaintiff and
21 protected under the laws of the United States. There is not and never has been an authorized
22 copy of the work.
23

24
25 ⁴ Registration No. VAu000981647

1 22. Defendant had access to and illegally copied the photograph.

2
3 23. Defendant, with no lawful right whatsoever in the photograph, knowingly and
4 willfully reproduced, prepared derivative works of, distributed copies and displayed the work
5 and otherwise exploited and placed it into the stream of commerce for their benefit in violation
6 of plaintiff's copyrights.
7

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9 24. As a result of defendant's copyright infringement, plaintiff demands damages equal
10 to its lost referrals revenue, reduced advertising payments, diminishment of the value of the
11 photograph and compensation for the actual use of the photograph pursuant to 17 U.S.C.A.
12 §504(b).
13

14 25. As a result of defendant's copyright infringement, plaintiff demands damages equal
15 to Wynn's profits pursuant to 17 U.S.C.A. §504(b).
16

17 CLAIM 2 – ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION
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19 26. Plaintiff adopts by reference all prior paragraphs.
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21 27. During the course of infringing the work, defendant intentionally altered the method
22 and means by which plaintiff monitors use of its images on the internet, a method it holds as a
23 trade secret.
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1
2 28. Defendant's alteration of copyright management information violated 17 U.S.C.A.
3 §1202(b), prohibiting such conduct.
4

5 29. Plaintiff demands statutory damages pursuant to 17 U.S.C.A. §1203(c)(3).
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8 30. Plaintiff demands recovery of its costs incurred in bringing this action pursuant to 17
9 U.S.C.A. §1203(b)(4).
10

11 31. Plaintiff demands attorney's fees pursuant to 17 U.S.C.A. §1203(b)(5).
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13 CLAIM 3 – UNJUST ENRICHMENT
14

15 32. Plaintiff adopts by reference all prior paragraphs.
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17 33. Defendant has received and obtained substantial gains, advantages and benefits by
18 using plaintiff's photograph for defendant's commercial purposes.

19 34. To the extent defendant has exploited the photograph without compensating
20 plaintiff, defendant have benefitted to the detriment of plaintiff. It would be unfair and
21 inequitable for defendant to be able to retain such benefits without compensating plaintiff.
22

23 35. To the extent defendant has used the photograph without attributing it to plaintiff,
24 and avoiding compensating plaintiff for its use, defendant has benefitted to the detriment of
25

1 plaintiff. It would be unfair and inequitable for defendant to be able to retain such benefits
2 without compensating plaintiff.
3

4 36. As a result of the unjust enrichment of defendant, plaintiff has incurred damages in
5 an amount to be determined at trial, plus applicable interest, attorney fees and costs. Defendant
6 is liable to plaintiff for such unjust enrichment, gains, advantages, and benefits.
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8 37. Because defendant's conduct was willful, intentional and in bad faith, plaintiff is
9 entitled to punitive and exemplary damages.
10

11 CLAIM 4 – UNFAIR COMPETITION
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13 38. Plaintiff adopts by reference all prior paragraphs.
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15 39. Defendant altered the photograph, knowingly and willfully encouraging their online
16 visitors to believe that defendant had created the photograph, or had the lawful right to use and
17 distribute the photograph, thus deceiving the public and appropriating plaintiff's intellectual
18 property for defendant's benefit.
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20 40. By willfully using plaintiff's property without authorization, defendant unfairly
21 received and obtained substantial gains, profits, advantages and benefits rightfully belonging
22 to plaintiff.
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25

DEMAND

47. Plaintiff demands judgment be entered against defendant for its actual damages.

48. That an order be entered compelling defendant to account for its financial gain, profits and advantages derived from its infringement of plaintiff's photograph. Plaintiff demands judgment be entered against defendant for these gains, profits and advantages in an amount not less than \$100,000.

49. That an order be entered compelling defendant to display an apology to plaintiff for the acts giving rise to this action for a period equal to the number of days from the commencement of infringement to a final judgment.

50. That an order be entered against defendant for such damages as plaintiff has sustained as a result of plaintiff's breach of contract.

51. Plaintiff demands judgment be entered against defendant for its costs.

52. Plaintiff demands judgment be entered against defendant for its reasonable attorney's fees.

53. Plaintiff demands such other and further relief as the court finds just.

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Kevin Traywick (WSBA #29729)
Attorney for Plaintiff
Dated: May 1, 2009